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10 Keaton Harvey, individually and on behalf of
all others similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

14 KEATON HARVEY, individually and on
15 behalf of all others similarly situated

Plaintiff,

vs.

19
20 APPLE INC., a California corporation,
and DOES 1-20, inclusive,

Defendants.

No 17-cv-07274-NC

**DECLARATION OF DINA E.
MICHELETTI IN SUPPORT OF
MOTION FOR EXPEDITED
DISCOVERY AND FOR
PRELIMINARY INJUNCTION**

DATE: February 21, 2018

TIME: 1:00 pm

COURT: 4

JUDGE: Hon. Nathanael Cousins

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1 I, Dina E. Micheletti, declare as follows:

2 1. I am a partner with the law firm of Fazio | Micheletti LLP, counsel of
 3 record for Plaintiff Keaton Harvey in the above-titled action, and I am a member in
 4 good standing of the bar of the State of California. Except where noted, the
 5 testimony set forth in this declaration is based on first-hand knowledge, about
 6 which I would and could testify competently in court if called upon to do so.

7 2. Plaintiff Harvey filed his complaint in this action on December 21,
 8 2017.¹ alleging that for at least five years Defendant Apple Inc. (“Apple”), *inter alia*,
 9 denied the existence, nature, and scope of a defect that caused the lithium-ion
 10 batteries in the iPhone 5c, iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus,
 11 iPhone 7, and iPhone 7 Plus (collectively, “Affected iPhones”) to suddenly shut down
 12 (even though the batteries were charged enough to last for hours under normal
 13 circumstances), behave erratically, and lose their charge precipitously for no
 14 apparent reason (the “Battery Defect”). Plaintiff also alleged that the results of
 15 independent laboratory testing forced Apple to admit that it had modified the
 16 iPhone operating system (“iOS”) software (the “Throttling Software”) to slow the
 17 processors in Affected iPhones as a means of reducing the load on their defective
 18 batteries, which not only perpetuated Apple’s fraudulent concealment of the Battery
 19 Defect, but caused owners of Affected iPhones to prematurely replace those devices
 20 because the Throttling Software had reduced their performance to the point that
 21 they were unable to perform basic functions. A true and correct copy of the
 22 operative complaint in this action is attached to this declaration as **Exhibit A**.

23

24

25 ¹ The Order Setting Initial Case Management Conference and ADR
 26 Deadlines (Dkt. No. 8) (“Order”) indicates that the complaint was filed on December
 27 22, 2017, apparently because the original complaint that was filed on December 21
 28 included an erroneous case number that was corrected the following day (December
 22). See Order at 2; Dkt. Nos. 1-3.

1 3. On December 28, 2017—one week after Plaintiff Harvey filed his
 2 complaint in the present action—Apple announced that it would initiate a program
 3 by which it would charge \$29 to replace the battery “for anyone with an iPhone 6 or
 4 later whose battery needs to be replaced . . .” (the “Defective Battery Program”).² A
 5 true and correct copy of a document in which announced the Defective Battery
 6 Program to the public, which is titled “A Message to Our Customers about iPhone
 7 Batteries and Performance,” is attached to this declaration as **Exhibit C**.

8 4. Initially, Apple was reported to have planned to commence the
 9 Defective Battery Program in January 2018, but reportedly decided instead to begin
 10 it on December 30, 2017, two days after it first announced the program. CNN was
 11 among many news outlets that reported that development. *See* Heather Kelly, “No
 12 wait: Apple offers \$29 replacement batteries immediately,” *CNN tech* (Dec. 30,
 13 2017), <http://money.cnn.com/2017/12/30/technology/apple-iphone-battery-available/index.html>, a true and correct copy of which is attached to this declaration
 14 as **Exhibit D**.

16 5. Apple encourages customers who need to replace the lithium-ion
 17 batteries in their iPhones to have them “serviced by Apple or an authorized service
 18 provider” and that Apple has a policy of recycling the batteries it replaces for
 19 customers. A true and correct copy of a document titled “Battery Service and
 20 Recycling,” which Apple makes available on its website,

22 _____
 23 2 Several days earlier, Apple admitted in another public announcement that
 24 it had modified the iPhone operating system (“iOS”) to slow iPhone processors as an
 25 ostensible means of reducing the load on the batteries Apple installed in the iPhone
 26 SE, iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, iPhone 7, and iPhone 7
 27 Plus. *See, e.g.*, Seung Lee, “Apple admits it does slow older iPhones—to prevent
 28 unexpected battery shutdowns,” *The Mercury News* (Dec. 20, 2017),
<https://www.mercurynews.com/2017/12/20/apple-admits-it-does-slow-down-old-iphones-to-prevent-unexpected-battery-shutdowns/>, a true and correct copy of which
 is attached to this declaration as **Exhibit B**.

1 <https://www.apple.com/batteries/service-and-recycling/>, is attached to this
 2 declaration as **Exhibit E**.

3 6. In an effort to ensure that Apple would, *inter alia*, preserve the
 4 batteries it removes and replaces in the course of the Defective Battery Program,
 5 along with all data collected as a result of that program, and all other relevant
 6 evidence, Plaintiff's counsel sent a letter to Apple's counsel Daniel R. Adler of
 7 Gibson Dunn & Crutcher, on January 7, 2017 (the "January 7 letter"). The January
 8 letter explains that Apple is obligated to preserve evidence and requests that,
 9 among other things, Apple confirm—no later than January 9, 2018—that it would
 10 preserve all batteries and data Apple obtained in connection with the Defective
 11 Battery Program. A true and correct copy of that letter is attached to this
 12 declaration as **Exhibit F**.

13 7. To date, Apple's counsel has not responded to the January 7 letter.

14 8. In addition to the concern created by the potential loss of critical
 15 evidence in this case a result of Apple adhering to its battery-recycling policy
 16 notwithstanding the pendency of this litigation, Apple is reportedly obtaining
 17 information from unrepresented putative class members who present Affected
 18 iPhones to Apple in connection with the Defective Battery Program.

19 9. For example, Apple's policy is to subject Affected iPhones to diagnostic
 20 testing before removing and replacing the defective batteries in Affected iPhones
 21 without regard to the results of diagnostic testing to which Apple requires
 22 customers to submit as a condition to participating in the Defective Battery
 23 Program. *See, e.g., iPhone Battery & Power Repair*, Apple,
 24 <https://support.apple.com/iphone/repair/battery-power> (last accessed Jan. 15, 2018),
 25 a true and correct copy of which is attached to this declaration as **Exhibit G**.

26 10. Plaintiff has moved the Court for an order granting a preliminary
 27 injunction and expedited discovery to ensure that potentially critical evidence is
 28

1 preserved during the pendency of the motion to coordinate and transfer before the
2 Judicial Panel on Multidistrict Litigation.

3 11. The preliminary injunction Plaintiff seeks by this motion will
4 primarily preserve the status quo by requiring Apple to safeguard and protect all
5 data, batteries, and other information it has collected as a result of the Defective
6 Battery Program while Plaintiff conducts discovery limited to a single deposition
7 pursuant to Federal Rule of Civil Procedure 30(b)(6).

8 12. Apple has recently announced that it has run out of replacement
9 batteries for many versions of Affected iPhones and does not anticipate having a
10 sufficient supply for most of those devices for two weeks to several weeks or, in the
11 case of the iPhone 6 Plus, several months, hence the Defective Battery Program will
12 not resume for the iPhone 6 Plus until late March or early April 2018. See, e.g., Joe
13 Rossignol, “Apple Delays iPhone 6 Plus Battery Replacements Until March-April
14 Due to Limited Supply,” *iMore* (Jan. 11, 2018),
15 <https://www.macrumors.com/2018/01/11/iphone-6-plus-battery-replacements-delay/>
16 (a true and correct copy of which is attached to this declaration as **Exhibit H**).

17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct, and that this declaration was
19 executed at San Ramon, California, on January 15, 2018.

by /s/ Dina E. Micheletti
Dina E. Micheletti

EXHIBIT A

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6 Keaton Harvey, on behalf of himself
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 KEATON HARVEY, on behalf of himself
11 and all others similarly situated.

12 Plaintiff,

14 |

17 Defendants.

No. _____

**COMPLAINT FOR DAMAGES
AND FOR EQUITABLE RELIEF
CLASS ACTION**

JURY TRIAL DEMANDED

1 Plaintiff, Keaton Harvey, on behalf of himself and all others similarly
 2 situated, allege as follows:

3 **PARTIES**

4 1. Plaintiff, Keaton Harvey, is a resident of New York, New York, who
 5 owned an iPhone 6 before replacing it with a newer-model iPhone that he purchased
 6 from Defendant Apple Inc.

7 2. Defendant Apple Inc. (“Apple”), is a corporation that was created under
 8 the laws of the State of California, and has its principal place of business in
 9 Cupertino, California.

10 3. Plaintiff is unaware of the true names and capacities of Does 1 through
 11 100 and sues them by fictitious names. Plaintiff will amend this Complaint to
 12 include these Doe defendants’ true names and capacities when they are ascertained.
 13 Each Doe defendant is responsible in some manner, including without limitation, as
 14 aiders and abettors, for the conduct alleged in this Complaint.

15 4. At all times mentioned in this Complaint, each and every defendant
 16 was an agent, representative, or employee of each and every other defendant and in
 17 doing the things alleged in this Complaint, each and every defendant was acting
 18 within the course and scope of such agency, representation or employment and was
 19 acting with the consent, permission and authorization of each of the remaining
 20 defendants. Each defendant’s actions alleged in this Complaint were ratified and
 21 approved by the other defendants and their respective officers, directors, or
 22 managing agents.

23 **JURISDICTION AND VENUE**

24 5. This Court has diversity jurisdiction over the claims asserted herein on
 25 behalf of a nationwide class pursuant to 28 U.S.C. section 1332, as amended in
 26 February 2005 by the Class Action Fairness Act. Jurisdiction is proper because

27 a. the amount in controversy in this class action exceeds five million
 28 dollars, exclusive of interest and costs, the proposed class includes

1 more than 100 members, more than one of whom reside in a state
 2 other than California; and

3 b. Apple has purposefully availed itself of the privilege of conducting
 4 business activities within the State of California, where Apple is
 5 incorporated; has its principal place of business; where its officers
 6 direct, control, and coordinate Apple's corporate activities; where Apple
 7 engaged in the unlawful conduct alleged in this Complaint by, *inter*
 8 *alia*, designing and selling the iPhone 5C, iPhone 6, the iPhone 6 Plus,
 9 the iPhone 6S, the iPhone 6S Plus, the iPhone 7, and the iPhone 7 Plus
 10 (and possibly other) Apple smartphones (collectively, the "Affected
 11 iPhones") with software that causes Affected iPhones to operate more
 12 slowly, and by implementing and executing the illegal, unfair,
 13 fraudulent, and unconscionable corporate policies and practices alleged
 14 herein; and by maintaining systematic and continuous business
 15 contacts with the State, primarily through its Cupertino headquarters.

16 6. Venue is proper in this judicial district pursuant to 28 U.S.C. section
 17 1391, and California Civil Code section 1780(d), because the conduct alleged in this
 18 Complaint occurred in this judicial district.

19 **GENERAL ALLEGATIONS**

20 7. The iPhone is an internet and multimedia-enabled "smartphone"
 21 designed and marketed by Apple. Apple introduced the original iPhone for sale in
 22 the United States in or about June 2007. Since then, Apple has introduced a
 23 succession of new models of the iPhone, including the Affected iPhones.

24 8. Each year, Apple, like its competitors, must find ways to encourage
 25 prospective customers to purchase the latest model of its product. Plaintiff is
 26 informed and believes that persuading consumers to replace their existing devices
 27 with new ones becomes more difficult as consumers become familiar with iPhone
 28 technology and more difficult to impress with new features. Plaintiff is also

1 informed and believes that consumers, including himself, will purchase a new
 2 smartphone if they perceive problems with the performance of their current device.

3 9. Although he had cared for his Affected iPhone (an iPhone 6)
 4 meticulously from the moment he purchased it, it was not without problems.
 5 Plaintiff's Affected iPhone would shut down suddenly, even when its battery levels
 6 were well over 50 percent. And, in addition to other performance problems, Plaintiff
 7 began to observe that his Affected iPhone had begun to operate in an extremely
 8 sluggish manner, making it difficult to perform basic functions on the device.
 9 Ultimately, the problems Plaintiff continued to experience with his Affected iPhone
 10 got to the point where he was compelled to replace it. Based on Apple's reputation
 11 and the belief that the iPhone was superior to smartphones offered by competitors,
 12 Plaintiff replaced his Affected iPhone with a new iPhone at a cost of more than
 13 \$1,000.

14 10. Plaintiff is informed and believes that Apple was aware of a defect in
 15 his Affected iPhone at the time he purchased a new one, and not only failed to
 16 disclose what it knew, but made deliberately misleading statements that were
 17 intended to conceal the nature and scope of that defect.

18 11. In or about November 2016, Apple announced that a "very small
 19 number" of Affected iPhones (specifically, the iPhone 6S and iPhone 6S Plus) were
 20 affected by a problem that caused those devices to shut down, suddenly and
 21 unexpectedly, "for no apparent reason." Plaintiff is informed and believes that, in
 22 actuality, Apple knew that the lithium-ion batteries that it installed in Affected
 23 iPhones were causing the devices to shut down unexpected, notwithstanding that
 24 their battery levels were at as much as 60 percent when the shut-down occurred.

25 12. Despite claiming that the shutdowns were occurring for "no apparent
 26 reason," Apple also announced that it had initiated a battery-replacement program
 27 that was limited to the iPhone 6S and the iPhone 6S Plus, and that neither the
 28

1 shutdown problem nor the battery-replacement program would serve to extend the
 2 applicable warranty.

3 13. Plaintiff is informed and believes that Apple's announcement was
 4 misleading and that Apple knew it was misleading at the time it made the
 5 announcement in November 2016. Apple admitted publicly that a "small number of
 6 customers outside the affected range [(i.e., Affected iPhones other than the 6S and
 7 the 6S Plus)] have also reported a shutdown." *See Jeff John Roberts, "Why It's Time*
 8 *for Apple to Come Clean About the iPhone Battery," Fortune* (Dec. 27, 2016)
 9 (available online at <http://fortune.com/2016/12/27/apple-iphone-6-battery-problem/>).
 10 Apple went on to claim, however, that "[s]ome of these shutdowns can occur under
 11 normal conditions for the iPhone to protect its electronics." *Id.*

12 14. Plaintiff is informed and believes that these statements were
 13 deliberately misleading as well. In actuality, the lithium-ion batteries in all Affected
 14 iPhones cause them to operate erratically and to shut down the device unexpectedly
 15 due to the batteries' inability to handle the demand created by processor speeds (the
 16 "battery defect").

17 15. Rather than curing the battery defect by providing a free battery
 18 replacement for all Affected iPhones, Apple sought to mask the battery defect by
 19 modifying the iPhone operating system ("iOS") so that it reduces Affected iPhones'
 20 processing speeds in an effort to prevent their batteries from causing erratic
 21 operation and unexpected shutdowns.

22 16. But modifying iOS not only allowed Apple to conceal the true nature
 23 and scope of the battery defect and to avoid expending time, money, and effort on
 24 correcting it, Apple's decision to modify iOS instead had an added benefit to Apple:
 25 the modified iOS would slow the performance of Affected iPhones, which would
 26 serve to compel consumers to replace them with new iPhones—just as Plaintiff did.

27 17. This is not mere speculation. Recently, a company that performed
 28 laboratory testing of Affected iPhones discovered that After denying the existence of

1 a battery problem for over a year, Apple recently admitted that it modified iOS in a
 2 manner that slowed the performance of Affected iPhones, but characterized this
 3 effort as a “feature”:

4 Our goal is to deliver the best experience for customers, which
 5 includes overall performance and prolonging the life of their
 6 devices. Lithium-ion batteries become less capable of supplying peak
 7 current demands when in cold conditions, have a low battery charge or
 8 as they age over time, which can result in the device unexpectedly
 9 shutting down to protect its electronic components.

10 Last year we released a feature for iPhone 6, iPhone 6s and
 11 iPhone SE to smooth out the instantaneous peaks only when
 12 needed to prevent the device from unexpectedly shutting down during
 13 these conditions. We’ve now extended that feature to iPhone 7 with
 14 iOS 11.2, and plan to add support for other products in the future.

15 Shara Tibiken, “Apple admits slowing older iPhones, says it’s to prevent battery
 16 issues,” *C/Net* (Dec. 20, 2017) (available online at <https://www.cnet.com/news/apple-slows-down-older-iphone-battery-issues/#ftag=CAD-09-10aa5b>).

17 18. Notwithstanding the purported benefits of this “feature,” Apple focused
 18 exclusively on the number of shutdowns it purportedly prevented, but said nothing
 19 about the fact that it also slowed the performance of Affected iPhones until after the
 20 iOS modification was discovered during independent laboratory testing. “The
 21 statement from Apple came in response to a report from earlier this week from
 22 Primate Labs, the company behind the Geekbench processor benchmark software.
 23 John Pool, the founder of the organization, said . . . that processors in iPhones slow
 24 down and decrease in performance as batteries age and lose capacity. Poole
 25 explained that users expect their phones to perform the same regardless of how old
 26 the battery is, but his tests indicated that wasn’t the case.” *Id.*

27 19. Plaintiff has brought this action on behalf of himself and all others
 28 similarly situated to require Apple **(a)** to modify iOS in a manner that prevents it
 29 from slowing the performance of Affected iPhones; **(b)** to provide owners of Affected
 30 iPhones with notice that the slow performance of those devices is caused by
 31 modifications Apple made to iOS; **(c)** reimburse current owners of Affected iPhones

1 with the purchase price they paid for those devices after Apple knew, but failed to
 2 disclose, the existence of the battery defect and the slow performance caused by the
 3 iOS modification; **(d)** to compensate current and former owners of Affected iPhones
 4 for the costs they incurred in attempting to repair or replace their Affected iPhones
 5 due to the battery defect and/or the slow performance caused by the iOS
 6 modification; **(d)** to provide current owners of Affected iPhones with new batteries
 7 for those devices free of charge; and **(e)** to compensate former owners of Affected
 8 iPhones for the cost of replacing those devices prematurely or, alternatively, to
 9 provide former owners with the opportunity to return their replacement iPhones in
 10 exchange for a refund together with the model of Affected iPhone (with a new
 11 battery) that they owned prior to replacing that device.

12 **CLASS ALLEGATIONS**

13 20. Plaintiff brings this class action pursuant to Federal Rule of Civil
 14 Procedure 23 and, to the extent applicable, the provisions of and California Civil
 15 Code section 1781, on behalf of himself and all other persons similarly situated.

16 21. The class that Plaintiff seeks to represent is defined as follows: All
 17 persons who reside in the United States who **(a)** own an Affected iPhone or **(b)**
 18 owned an Affected iPhone and replaced it with a new device.

19 22. Plaintiff also seeks to represent a subclass that includes each member
 20 of the proposed class described in Paragraph 21, above, who is a “consumer,” as that
 21 term is defined by California Civil Code section 1761(d), or purchased “goods” or
 22 “consumer goods,” as those terms are defined by California Civil Code sections 1761(a)
 23 and 1791(a), respectively (the “Consumer Subclass”).

24 23. Excluded from the class are the following:

25 a. Apple, its subsidiaries, affiliates, officers, directors, and
 26 employees;

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b. persons who have settled with and validly released Apple from separate, non-class legal actions against Apple based on the conduct alleged herein;

c. counsel, and the immediate families of counsel, who represent Plaintiff in this action;

d. the judge presiding over this action;

e. jurors who are impaneled to render a verdict on the claims alleged in this action; and

f. persons who purchased an Extended Warranty in Colorado or in Florida and made a claim pursuant to the Extended Warranty.

11 24. Plaintiff are informed and believe that the proposed class comprises
12 millions of members. The class is, therefore, so numerous and geographically
13 dispersed that joinder of all members in one action is impracticable.

14 25. Apple has acted with respect to Plaintiff and members of the proposed
15 class in a manner generally applicable to each of them. There is a well-defined
16 community of interest in the questions of law and fact involved, which affect all
17 class members. The questions of law and fact common to the class predominate
18 over the questions that may affect individual class members, including the
19 following:

a. whether Apple modified iOS in a manner that slowed the performance of Affected iPhones;

b. whether the representations Apple has made about the nature and scope of the battery defect are false;

c. whether Apple made false representations about the nature and scope of the battery defect for the purpose of concealing it and avoiding the expense of recalling and replacing the batteries in Affected iPhones;

d. whether Apple used the iOS modification to profit from Plaintiff and members of the proposed class by inducing them to buy a new replacement for their Affected iPhones;

e. whether Apple is subject to liability for fraudulently concealing material facts from Plaintiff and members of the proposed class;

f. whether Apple is subject to liability for violating the Consumers
Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750-1784;

g. whether Apple's conduct has violated the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17209;

h. whether Apple has been unjustly enriched as a result of its fraudulent conduct, such that it would be inequitable for Apple to retain the benefits conferred upon it by Plaintiff and the proposed class;

i. whether Plaintiff claims satisfy the criteria for class certification under Federal Rule of Civil Procedure 23 and, to the extent applicable, California Civil Code section 1781;

j. whether compensatory or consequential damages should be awarded to Plaintiff and members of the proposed class;

k. whether punitive damages should be awarded to Plaintiff and members of the proposed class;

l. whether restitution should be awarded to Plaintiff and members of the proposed class;

m. whether other, additional relief is appropriate, and what that relief should be.

26. Plaintiff claims are typical of the claims of all members of the class they propose to represent in this action.

27. Plaintiff will fairly and adequately represent and protect the interests of the class, and do not have interests that are antagonistic to or in conflict with those they seek to represent.

1 28. Plaintiff have retained counsel who have extensive experience in the
 2 prosecution of class actions and other forms of complex litigation.

3 29. In view of the complexity of the issues and the expense that an
 4 individual plaintiff would incur if he or she attempted to obtain relief from a large,
 5 transnational corporation such as Apple, the separate claims of individual class
 6 members are monetarily insufficient to support separate actions. Because of the size
 7 of the individual class members' claims, few, if any, class members could afford to
 8 seek legal redress for the wrongs complained of in this Complaint.

9 30. The class is readily definable, and prosecution as a class action will
 10 eliminate the possibility of repetitious litigation and will provide redress for claims
 11 too small to support the expense of individual, complex litigation. Absent a class
 12 action, class members will continue to suffer losses, Apple's violations of law will be
 13 allowed to proceed without a full, fair, judicially supervised remedy, and Apple will
 14 retain sums received as a result of its wrongdoing. A class action will provide a fair
 15 and efficient method for adjudicating this controversy.

16 31. The prosecution of separate claims by individual class members would
 17 create a risk of inconsistent or varying adjudications with respect to thousands of
 18 individual class members, which would, as a practical matter, dispose of the
 19 interests of the class members not parties to those separate actions or would
 20 substantially impair or impede their ability to protect their interests and enforce
 21 their rights.

22 32. The proposed class satisfies the certification criteria of Federal Rule of
 23 Civil Procedure 23.

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CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF
(Fraudulent Concealment)**

33. Plaintiff realleges and incorporates by reference the allegations contained in preceding paragraphs of this Complaint.

6 34. At all times relevant herein, Apple made misrepresentations of
7 material fact to Plaintiff and the proposed class regarding the true nature and scope
8 of the battery defect, claiming that an “unknown” problem was causing certain
9 Affected iPhones to shutdown unexpectedly. Apple also falsely represented the
10 reason that it modified iOS (to prolong battery life) in Affected iPhones, knowing
11 that the modification also substantially slowed the performance of Affected iPhones,
12 which would cause consumers to replace those devices with new iPhones. Apple
13 knew those representations were false when it made them, and did so for the
14 purpose of diminishing the possibility that the facts described in Paragraphs 10
15 through 18 and 35 of this Complaint (which are incorporated herein by reference)
16 would be discovered by Plaintiff and members of the proposed class.

17 35. Apple has concealed material facts from Plaintiff and the proposed
18 class, including the following:

19 a. the existence, nature, and scope of the battery defect;

20 b. that modifying iOS for the ostensible purpose of prolonging

21 battery life also caused Affected iPhones to perform substantially slower as

22 their batteries aged, notwithstanding the iOS modification;

23 c. that the battery defect could only be remedied by replacing the

24 lithium batteries in Affected iPhones;

25 d. that Apple concealed the foregoing facts from Plaintiff and

26 members of the proposed class as a means of avoiding the expense involved

27 with rectifying the battery defect.

1 36. Apple had a duty to disclose these facts, regardless of the existence of
 2 privity (see, e.g., Cal. Civ. Code § 1711), by virtue of **(a)** Apple's exclusive knowledge
 3 about the nature and scope of the battery defect, and that its modifications of iOS
 4 caused Affected iPhones to perform poorly; **(b)** Apple's awareness that Plaintiff and
 5 members of the proposed class were not reasonably likely to discover these facts; **(c)**
 6 Apple's active concealment of those facts from Plaintiff and members of the class (by,
 7 *inter alia*, making the false representations described in Paragraphs 10 through 18
 8 and 34, above); and **(c)** Apple's statutory and common-law obligations to disclose
 9 material information to the consumers who own or formerly owned Affected
 10 iPhones, as alleged herein. Plaintiff would have acted differently if Apple had
 11 disclosed this information to him and allowed him to make a fully-informed decision
 12 before he purchased a replacement for his Affected iPhone.

13 37. The facts Apple has concealed from consumers are material and
 14 uniform to Plaintiff and to the members of the class he proposes to represent in this
 15 action.

16 38. Apple made misrepresentations of material fact and concealed the
 17 material facts alleged herein intentionally and/or recklessly, with the intention that
 18 Plaintiff and members of the proposed class would rely on its misrepresentations.
 19 Plaintiff and members of the proposed class would have acted differently had the
 20 omitted facts been disclosed to them.

21 39. As a proximate result of Apple's misrepresentations and concealment
 22 and suppression of material facts, Plaintiff and the proposed class have sustained
 23 damage by, *inter alia*, bearing the cost of purchasing new Affected iPhones; bearing
 24 the cost of repairs due to the battery defect and/or problems resulting from the slow
 25 performance caused by the iOS modification; and bearing the cost of purchasing
 26 replacement devices as a result of the battery defect and/or the slow performance
 27 caused by the iOS modification.

28

1 40. Because Apple engaged in the conduct alleged herein deliberately and
2 with willful and malicious intent, Plaintiff and the proposed class are entitled to an
3 award of punitive damages. The total amount of damages suffered by Plaintiff and
4 members of the proposed class will be proved at trial.

SECOND CLAIM FOR RELIEF
(Unfair and Deceptive Acts and Practices
in Violation of the Consumers Legal Remedies Act)

7 41. Plaintiff realleges and incorporates by reference the allegations set forth
8 in each of the preceding paragraphs of this Complaint.

9 42. This claim for relief is brought pursuant to the CLRA. Plaintiff and
10 members of the Consumer Subclass are “consumers,” as that term is defined by Civil
11 Code section 1761(d) because they bought Affected iPhones for personal, family, or
12 household purposes.

13 43. Plaintiff and members of the Consumer Subclass have engaged in a
14 “transaction” with Apple, as that term is defined by Civil Code section 1761(e).

15 44. The conduct alleged in this Complaint constitutes unfair methods of
16 competition and unfair and deceptive acts and practices for the purposes of the CLRA,
17 and were undertaken by Apple in transactions intended to result in, and which
18 resulted in, the sale of goods to consumers; namely, to sell replacement batteries,
19 repair services, and/or replacement devices for their Affected iPhones.

20 45. By engaging in the conduct alleged in Paragraphs 10 through 18 of this
21 Complaint, Apple has violated subdivisions (a)(5), (a)(7), and (a)(9) of California Civil
22 Code section 1770 by, *inter alia*, misrepresenting and concealing the true nature and
23 scope of the battery defect and that the modification of iOS would cause Affected
24 iPhones to perform slowly and erratically and not disclosing those facts to Plaintiff
25 and members of the proposed class before they bore the cost of purchasing a
26 replacement device for their Affected iPhone, purchasing a new Affected iPhone,
27 and/or purchasing replacement parts and/or repair services as a result of the battery
28 defect or the iOS modification.

1 46. By concealing the battery defect and the iOS modification from Plaintiff
2 and members of the proposed class, Apple has represented, and continues to
3 represent, that Affected iPhones have characteristics, uses and benefits, or qualities
4 that they do not have, and that they are of a particular standard, quality, or grade,
5 when they are not, in violation of Civil Code section 1770, subsections (a)(5) and
6 (a)(7).

7 47. By engaging in the conduct alleged herein, above, Apple has also
8 advertised, and continues to advertise, goods with the intent not to sell them as
9 advertised, in violation of California Civil Code section 1770(a)(9).

10 48. Pursuant to Section 1782 of the CLRA, Plaintiff has sent written notice
11 to Apple by certified mail regarding its violations of the CLRA, thereby providing
12 Apple with an opportunity to correct or otherwise rectify the problems alleged herein
13 within 30 days of receipt of that notice.

14 49. Unless Apple agrees to correct, repair, replace, or otherwise rectify the
15 problems created by Apple's conduct as alleged herein, Plaintiff will amend this
16 Complaint to seek an order awarding actual damages and, because Apple engaged in
17 the conduct alleged herein deliberately and with willful and malicious intent, punitive
18 damages.

19 50. Plaintiff now seeks an order requiring Apple to **(a)** cease violating the
20 CLRA by modifying iOS in a manner that prevents it from slowing the performance
21 of Affected iPhones; **(b)** to provide owners of Affected iPhones with notice that the
22 slow performance of those devices is caused by modifications Apple made to iOS;
23 and **(c)** to provide current owners of Affected iPhones with new batteries for those
24 devices free of charge.

THIRD CLAIM FOR RELIEF
(Unlawful, Fraudulent, and Unfair Business Practices
in Violation of the Unfair Competition Law)

27 51. Plaintiff realleges and incorporates by reference the allegations set
28 forth in each of the preceding paragraphs of this Complaint.

1 52. By committing the acts and practices alleged herein, Apple has
 2 engaged in unlawful, fraudulent, and unfair business practices in violation of the
 3 UCL:

4 a. **Unlawful Conduct:** As a result of engaging in the conduct
 5 alleged in this Complaint, Apple has violated the UCL's proscription against
 6 engaging in unlawful conduct by virtue of **(i)** its fraudulent and deceitful
 7 conduct in violation of California Civil Code sections 1709 through 1711; and
 8 **(ii)** its violations of the Consumers Legal Remedies Act, California Civil Code
 9 sections 1770(a)(5), (a)(7), and (a)(9).

10 b. **Fraudulent Conduct:** Apple has violated the UCL's
 11 proscription against fraud as a result of engaging in the fraudulent and
 12 deceitful conduct alleged in paragraphs 10 through 18 of this Complaint.

13 c. **Unfair Conduct:** Apple has violated the UCL's proscription
 14 against unfair conduct as a result of engaging in the conduct alleged in this
 15 Complaint, which violates legislatively-declared policies articulated in, *inter*
 16 *alia*, California Civil Code sections 1710, 1711, and 1770, subsections (a)(5),
 17 (a)(7), and (a)(9).

18 53. Apple's violations of the UCL continue to this day. As a direct and
 19 proximate result of Apple's violations of the UCL, Plaintiff has suffered actual
 20 damage in that, *inter alia*, they paid more for their Affected iPhones than they
 21 would have had Apple not concealed the existence of the battery defect and the
 22 effects of its modification of iOS.

23 54. Pursuant to Section 17203 of the UCL, Plaintiff and the class seek an
 24 order that requires Apple **(a)** to modify iOS in a manner that prevents it from
 25 slowing the performance of Affected iPhones; **(b)** to provide owners of Affected
 26 iPhones with notice that the slow performance of those devices is caused by
 27 modifications Apple made to iOS; **(c)** reimburse current owners of Affected iPhones
 28 with the purchase price they paid for those devices after Apple knew, but failed to

1 disclose, the existence of the battery defect and the slow performance caused by the
 2 iOS modification; **(d)** to provide current owners of Affected iPhones with new
 3 batteries for those devices free of charge; **(e)** to make full restitution of all moneys
 4 wrongfully obtained from its violations of the UCL, as alleged in this Complaint;
 5 and **(f)** requires Apple to pay the attorney fees and costs incurred by counsel for
 6 Plaintiff and the proposed class in accordance with California Code of Civil
 7 Procedure section 1021.5.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of themselves and all others similarly
 10 situated, pray for relief in this Complaint as follows:

11 1. For an order certifying that the action may be maintained as a class
 12 action, on behalf of the proposed class, the Consumer Subclass, and any other
 13 subclass(es) the Court may deem appropriate;

14 **AS TO THE FIRST CLAIM FOR RELIEF**

15 1. For an award of monetary damages, including but not limited to,
 16 compensatory, incidental and consequential damages commensurate with proof at
 17 trial for the acts complained of herein;

18 2. For an award of punitive damages in an amount consistent with
 19 applicable statutes and precedent;

20 **AS TO THE SECOND CLAIM FOR RELIEF**

21 3. For an order pursuant to California Civil Code section 1780(a)(2)
 22 requiring Apple to **(a)** provide owners of Affected iPhones with notice that the slow
 23 performance of those devices is caused by modifications Apple made to iOS; **(b)**
 24 modify iOS in a manner that prevents it from slowing the performance of Affected
 25 iPhones; and **(c)** provide current owners of Affected iPhones with new batteries for
 26 those devices free of charge;

27 4. For an order awarding attorney fees and costs pursuant to California
 28 Civil Code section 1780(e);

AS TO THE THIRD CLAIM FOR RELIEF

2 5. For an order that requires Apple **(a)** to modify iOS in a manner that
3 prevents it from slowing the performance of Affected iPhones; **(b)** to provide owners
4 of Affected iPhones with notice that the slow performance of those devices is caused
5 by modifications Apple made to iOS; **(c)** reimburse current owners of Affected
6 iPhones with the purchase price they paid for those devices after Apple knew, but
7 failed to disclose, the existence of the battery defect and the slow performance
8 caused by the iOS modification; **(d)** to provide current owners of Affected iPhones
9 with new batteries for those devices free of charge; **(e)** to make full restitution of all
10 moneys wrongfully obtained from its violations of the UCL, as alleged in this
11 Complaint; and **(f)** requires Apple to pay the attorney fees and costs incurred by
12 counsel for Plaintiff and the proposed class in accordance with California Code of
13 Civil Procedure section 1021.5.

AS TO ALL CLAIMS FOR RELIEF

15 6. For an award of attorney fees;

16 7. For an award of costs;

17 8. For an award of pre- and post-judgment interest on any amounts

18 awarded; and

19 9. For any and all other relief the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

21 Plaintiff and the proposed class demand a jury trial in this action for all the
22 causes of action so triable.

DATED: December 21, 2017 FAZIO | MICHELETTI LLP

by /s/ Jeffrey L. Fazio

*Attorneys for Plaintiff Keaton Harvey
and the Proposed Class*

EXHIBIT B

Business > Technology

Apple admits it does slow down old iPhones – to prevent unexpected battery shutdowns

16



Justin Sullivan/Getty Images

CUPERTINO, CA – SEPTEMBER 12: (L-R) The new iPhone 8, iPhone X and iPhone 8S are displayed during an Apple special event at the Steve Jobs Theatre on the Apple Park campus on September 12, 2017 in Cupertino, California. Apple held their first special event at the new Apple Park campus where they announced the new iPhone 8, iPhone X and the Apple Watch Series 3. (Photo by Justin Sullivan/Getty Images)

By **SEUNG LEE** | slee@bayareanewsgroup.com | Bay Area

News Group

PUBLISHED: December 20, 2017 at 4:36 pm | UPDATED: December 21, 2017 at 4:42 am

CUPERTINO — Among legions of Apple users, the notion that Apple slows down iPhones as they age was a widely shared but unverified concept for many years.

Yet on Wednesday, Apple acknowledged that it does limit iPhone performance with new iOS software updates, according to [multiple media outlets](#).

Apple's statement followed a study this week that asserted Apple curbs the speed of aging iPhones. The study went viral.

The Cupertino tech giant explained it put in checks, which limit computing power but preserve iPhones from unexpected shutdowns due to overuse of battery power.

“Our goal is to deliver the best experience for customers, which includes overall performance and prolonging the life of their devices,” said Apple, in a statement sent to media outlets including TechCrunch, BuzzFeed News and The Verge. “Lithium-ion batteries become less capable of supplying peak current demands when in cold conditions, have a low battery charge or as they age over time, which can result in the device unexpectedly shutting down to protect its electronic components.”

The study that preceded Apple's statement was [published Monday by John Poole](#), the founder of Primate Labs and the Geekbench app, which benchmarks desktop devices and smartphones, including the iPhone. Poole independently studied the phenomenon after a Reddit post, about replacing batteries on old iPhones helping to improve performance, drew more than 800 comments.

Poole noticed a significant downgrade in performance between iPhones 6 and 7 running iOS 10 and 11. He correctly hypothesized that Apple introduced a change to limit computing performance.

“I believe (as do others) that Apple introduced a change to limit performance when battery condition decreases past a certain point,” wrote Poole.

Apple said the change was an unannounced feature to protect the iPhone.

“Last year we released a feature for iPhone 6, iPhone 6s and iPhone SE to smooth out the instantaneous peaks only when needed to prevent the device from unexpectedly shutting down during these conditions,” said Apple. “We’ve now extended that feature to iPhone 7 with iOS 11.2, and plan to add support for other products in the future.”

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For years, iPhone users, tech analysts and journalists floated the idea of “planned obsolescence” — that Apple throttles old iPhones’ performance to squeeze users into upgrading to the newest model. Apple was accused of planned obsolescence over the iPhone 4s in a New York lawsuit in 2015.

Opinions and studies remained divided on this issue. Futuremark, a Finnish benchmarking company, published a study in October which concluded that Apple does not throttle older devices and that it “actually does a good job of supporting its older devices with regular updates that maintain a consistent level of performance across iOS versions.”

Responding to whether Apple’s statement runs contrary to Futuremark’s conclusions, Futuremark spokesperson Ryan McCall said the statement had “nothing to do with the concept of forced (obsolescence).”

“In essence, this is a matter of the battery not being able to perform, and the device having to compensate,” said McCall. “It’s a trade-off between unexpected device crashes and lower maintained performance without crashes.”

Apple did not clarify in its statement whether replacing the batteries, which can be done officially at \$79 for those without AppleCare+ warranty program, will help improve performance.

Apple did not respond to questions from this news organization about whether battery replacements will help old iPhones’ performance and whether other Apple products like the iPad or the MacBook have similar performance checks to prevent unexpected shutdowns.

For those who hope to save money in replacing a battery, a standalone iPhone battery can cost as little as \$45, according to Kyle Wiens, founder of a self-repair manual website called iFixit. While he criticized Apple’s official battery replacement cost, he said he believes the iOS feature to curb performance for battery preservation is a “reasonable” approach.

“I think this software change is a good change,” said Wiens. “They should not revert back.”

However, Wiens and other Apple analysts said the company’s acknowledgment Wednesday needs to be its first step of many to be more transparent about the iPhone’s battery and performance issues.

“They should have been letting us know beforehand, and there should have been an option to turn the feature off,” said Creative Strategies analyst Ben Bajarin. “It was good they responded, but hopefully this is Apple wanting to be more transparent.”

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CoolSculpting vs. Lipo: Which is Better?

By Robert Aycock, MD, FACS

Looking to eliminate fat & shed inches, but debating your options? Bay Area plastic surgeon Dr. Aycock explores CoolSculpting vs. Lipo

Tags: [Apple](#), [iPhone](#)



Seung Lee Seung covers Apple and personal technology for the Bay Area News Group. He was previously a technology reporter for Newsweek and a weekly columnist for the San Francisco Examiner. Seung grew up in Los Angeles and graduated from UC Berkeley.

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EXHIBIT C

December 28, 2017

A Message to Our Customers about iPhone Batteries and Performance

We've been hearing feedback from our customers about the way we handle performance for iPhones with older batteries and how we have communicated that process. We know that some of you feel Apple has let you down. We apologize. There's been a lot of misunderstanding about this issue, so we would like to clarify and let you know about some changes we're making.

First and foremost, we have never — and would never — do anything to intentionally shorten the life of any Apple product, or degrade the user experience to drive customer upgrades. Our goal has always been to create products that our customers love, and making iPhones last as long as possible is an important part of that.

How batteries age

All rechargeable batteries are consumable components that become less effective as they chemically age and their ability to hold a charge diminishes. Time and the number of times a battery has been charged are not the only factors in this chemical aging process.

Device use also affects the performance of a battery over its lifespan. For example, leaving or charging a battery in a hot environment can cause a battery to age faster. These are characteristics of battery chemistry, common to lithium-ion batteries across the industry.

A chemically aged battery also becomes less capable of delivering peak energy loads, especially in a low state of charge, which may result in a device unexpectedly shutting itself down in some situations.

To help customers learn more about iPhone's rechargeable battery and the factors affecting its performance, we've posted a new support article, [iPhone Battery and Performance](#).

It should go without saying that we think sudden, unexpected shutdowns are unacceptable. We don't want any of our users to lose a call, miss taking a picture or have any other part of their iPhone experience interrupted if we can avoid it.

Preventing unexpected shutdowns

About a year ago in iOS 10.2.1, we delivered a software update that improves power management during peak workloads to avoid unexpected shutdowns on iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, and iPhone SE. With the update, iOS dynamically manages the maximum performance of some system components when needed to prevent a shutdown. While these changes may go unnoticed, in some cases users may experience longer launch times for apps and other reductions in performance.

Customer response to iOS 10.2.1 was positive, as it successfully reduced the occurrence of unexpected shutdowns. We recently extended the same support for iPhone 7 and iPhone 7 Plus in iOS 11.2.

Of course, when a chemically aged battery is replaced with a new one, iPhone performance returns to normal when operated in standard conditions.

Recent user feedback

Over the course of this fall, we began to receive feedback from some users who were seeing slower performance in certain situations. Based on our experience, we initially thought this was due to a combination of two factors: a normal, temporary performance impact when upgrading the operating system as iPhone installs new software and updates apps, and minor bugs in the initial release which have since been fixed.

We now believe that another contributor to these user experiences is the continued chemical aging of the batteries in older iPhone 6 and iPhone 6s devices, many of which are still running on their original batteries.

Addressing customer concerns

We've always wanted our customers to be able to use their iPhones as long as possible. We're proud that Apple products are known for their durability, and for holding their value longer than our competitors' devices.

To address our customers' concerns, to recognize their loyalty and to regain the trust of anyone who may have doubted Apple's intentions, we've decided to take the following steps:

- Apple is reducing the price of an out-of-warranty iPhone battery replacement by \$50 — from \$79 to \$29 — for anyone with an iPhone 6 or later whose battery needs to be replaced, available worldwide through December 2018. Details will be provided soon on apple.com.
- Early in 2018, we will issue an iOS software update with new features that give users more visibility into the health of their iPhone's battery, so they can see for themselves if its condition is affecting performance.
- As always, our team is working on ways to make the user experience even better, including improving how we manage performance and avoid unexpected shutdowns as batteries age.

At Apple, our customers' trust means everything to us. We will never stop working to earn and maintain it. We are able to do the work we love only because of your faith and support — and we will never forget that or take it for granted.

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No wait: Apple offers \$29 replacement batteries immediately

by Heather Kelly [@heatherkelly](#)

December 30, 2017: 4:33 PM ET

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How the iPhone changed the world in just 10 years

Apple is working overtime to make amends with angry iPhone owners after revealing it slows down performance on older models.

People with an iPhone 6 or later can get a \$29 replacement battery immediately — a month earlier than Apple originally planned to start offering discounted replacements. The company confirmed the early availability on Saturday.

"We expected to need more time to be ready, but we are happy to offer our customers the lower pricing right away. Initial supplies of some replacement batteries may be limited," said an Apple spokesperson in a statement.

Last week it was discovered that Apple was slowing down older iPhones on purpose. The company confirmed it was slowing performance at certain peak moments to prevent sudden battery shut downs. It said the power management feature, which was quietly rolled out in an iOS update last year, was only necessary for phones with aging lithium ion batteries. Swapping in a fresh battery should restore a phone back up to its normal speeds.

Related: Apple apologizes for slowing iPhone, drops battery prices

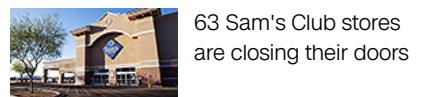
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Customers were upset that the company did not tell them about the feature, and many thought it was an attempt to get people to upgrade to newer iPhone models. Some people are already suing Apple and seeking class action status.

In a letter to customers posted Thursday, Apple apologized for poor communication about the slowdown and denied it was an attempt to force upgrades. To make amends, Apple said it would offer the cheaper replacement batteries and working on a new iOS feature that will give users more information on their battery's status.

Related: Apple CEO Tim Cook now takes private planes

The batteries cost \$29 instead of \$79 and are available worldwide by going to an Apple Store or Apple certified retailer, or mailing a phone into Apple support. Apple originally said the batteries would be available at the \$50 discount starting at the end of January. The lower prices are only available until the end of 2018.

The power management update was first rolled out a year ago to the iPhone 6, iPhone 6 Plus, iPhone 6S, iPhone 6S Plus and iPhone SE. Apple later added it for the iPhone 7 and iPhone 7 Plus.

CNNMoney (San Francisco)
First published December 30, 2017: 4:33 PM ET

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EXHIBIT E

Batteries

Why Lithium-ion? Maximizing Performance Service and Recycling

Battery Service and Recycling

All rechargeable batteries have a limited lifespan and may eventually need to be serviced or recycled. Your own battery's lifespan will vary depending on how you use your device as well as the settings you choose for it.

Use Apple or an authorized service provider for service.

If you need to charge your battery more and more frequently, it might be time to service it. For products with built-in lithium-ion polymer batteries, the batteries should be serviced by Apple or an authorized service provider.

iPhone Owners

Your battery is designed to retain up to 80% of its original capacity at 500 complete charge cycles. The one-year warranty includes service coverage for a defective battery. If it is out of warranty, Apple offers a battery service for \$79, plus \$6.95 shipping, subject to

local tax.

Apple Watch Owners

Your battery is designed to retain up to 80% of its original capacity at 1000 complete charge cycles. The one-year warranty (for Apple Watch and Apple Watch Sport) and two-year warranty (for Apple Watch Edition) include service coverage for a defective battery. If it is out of warranty, Apple offers a battery service. Prices and terms may vary.

iPad Owners

Your battery is designed to retain up to 80% of its original capacity at 1000 complete charge cycles. The one-year warranty includes service coverage for a defective battery. If it is out of warranty, Apple offers a battery service for \$99, plus \$6.95 shipping, subject to local tax.

iPod Owners

Your battery is designed to retain up to 80% of its original capacity at 400 complete charge cycles. The one-year warranty includes service coverage for a defective battery. If it is out of warranty, Apple offers a battery service for \$49 (iPod shuffle), \$59 (iPod nano and iPod classic), and \$79 (iPod touch), plus \$6.95 shipping, subject to local tax.

MacBook Owners

Your battery is designed to retain up to 80% of its original capacity at 1000 complete charge cycles. The one-year warranty includes replacement coverage for a defective battery. Apple offers a battery replacement service for all MacBook, MacBook Air, and MacBook Pro notebooks with built-in batteries.

We'll recycle your battery
responsibly.

Putting any battery directly in the trash is dangerous for the environment and for those who live in it. By servicing your Apple batteries only through Apple or an Apple authorized service provider, you can be sure they'll be recycled with respect for the earth. You can recycle your entire device with us, battery included — you might even qualify for a credit to use toward a new Apple product.

[Learn more about Apple's recycling program >](#)

[Batteries](#) [Service and Recycling](#)

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EXHIBIT F



January 7, 2018

BY ELECTRONIC MAIL (dadler@gibsondunn.com)

Daniel R. Adler, Esq.
Gibson Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071

Re: *Harvey v. Apple Inc.*
Case No. 17-cv-07274-NC

Dear Mr. Adler:

On December 21, 2017, our client filed a complaint in the above-referenced putative class action. The case concerns Apple's decision to install defective lithium-ion batteries with an inordinate propensity to suddenly shut down and cause other operating problems (the "Battery Defect") in the iPhone SE, iPhone 6, 6 Plus, 6s, 6s Plus, iPhone SE, iPhone 7, and 7 Plus, (collectively, the "Affected iPhones"), and possibly other models, and to surreptitiously modify iOS software in a manner that masked the Battery Defect by enabling Apple to slow the processing speed of Affected iPhones, which caused them to become difficult or impossible to use for ordinary purposes and thereby cause customers to prematurely replace their Affected iPhones.

On behalf of Plaintiff and the other members of the proposed class, Apple¹ is hereby instructed to preserve **(1)** all "Information," which, for the purposes of this letter, is defined as all documents and electronically-stored

¹ For purposes of this letter, "Apple," "You," and "Your" refers to Defendant Apple Inc., its subsidiaries and/or related companies, as well as its directors, officers, agents, employees, representatives, suppliers, and anyone purporting to act on Apple's behalf, including, but not limited to, AppleCare Service Company, Inc., Amperex Technology Limited (ATL), Contemporary Amperex Technology Limited (CATL), Samsung, Foxconn, and Exponent.

Daniel R. Adler — January 7, 2018 — Page 2

information (including, but not limited to, metadata and diagnostic data) potentially relevant to the claims and defenses in this litigation² and (2) “Tangible Things,” which, for the purposes of this letter, means all relevant hardware, including Affected iPhones and/or batteries in Apple’s possession, custody, or control that have been replaced as a result of the Battery Defect and/or the effects of Apple’s iOS updates in Affected Phones, regardless of whether such replacements occurred within or outside of applicable Apple standard warranty or AppleCare warranty periods, regardless of whether the customer fully or partially paid for the replacement, regardless of the physical location at which such replacements occurred (e.g., call center or retail), and regardless of whether such replacements occurred in connection with or as a result of the announcement Apple made in a document titled “A Message to Our Customers about iPhone Batteries and Performance” on or about December 28, 2017 (hereinafter, “\$29 Defective Battery Program”).

The duty to preserve evidence is broad and extends to all Information and Tangible Things in existence as of the time Apple reasonably anticipated litigation, regardless of whether it has been stored electronically (e.g., in any electronic device used to store data, regardless of location, medium or format) or in hard copy. *See, e.g., Apple Inc. v. Samsung Elecs. Co.*, 888 F. Supp. 2d 976, 989-90 (N.D. Cal. 2012).

To ensure that all Information and Tangible Things are preserved, Apple may not limit its preservation instructions to a few self-selected custodians; rather, it is obligated to communicate directly with all persons who are reasonably likely to have possession, custody or control of relevant Information and Tangible Things — including, but not limited to, information technology and/or administrative personnel involved with electronic data retention, deletion, and archiving — and instruct them to ensure its preservation for the duration of this litigation. *See, e.g., id.* at 997. Included within this obligation is the duty to advise all such persons that any regularly scheduled or automatic deletion of email or other electronic Information, and any scheduled or unscheduled document or data destruction, must be discontinued immediately with respect to any Information and/or Tangible Thing. *Id.*

Accordingly, among other things, please suspend any instructions to any such person to reduce the size of their email accounts by deleting Information. *See id.* Additionally, to the extent Apple maintains “backups” of Information in the form of electronic data that are rewritten, erased, or replaced during the normal course of business or otherwise, please ensure

² Electronically stored information must be preserved in its native format, with metadata intact.

Daniel R. Adler — January 7, 2018 — Page 3

that such practices cease, and that steps are taken to preserve all iterations of such “backups” for the duration of the litigation. Apple’s duty to ensure these practices are implemented and adhered to continues throughout the litigation. *See, e.g., Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 218 (S.D.N.Y. 2003).

If Apple intends to use key-word searches to carry out/execute its preservation duties (in whole or in part), please advise Plaintiff of such key words no later than January 15, 2018.

In addition to including Information and Tangible Things pertaining to the nature, scope, and effect of the Battery Defect in Affected iPhones and Apple’s efforts to mask the Battery Defect with iOS updates, Apple’s preservation duty extends to, but is not limited to, Information and Tangible Things pertaining to **(a)** Apple’s Vice President of Product Marketing, Greg Joswiak, making a statement that, “[a]fter 400 complete cycles, the iPhone’s battery still has 80 percent of its charged capacity,” in an article by Jason Snell, “The Truth About iPhone Battery Lifespan,” *Macworld* (July 12, 2007); **(b)** Apple’s decision to conduct a program to replace batteries in iPhone 5 devices that were manufactured between September 2012 and January 2013; **(c)** Apple’s decision to extend the iPhone 5 battery-replacement program to January 2016; **(d)** Apple’s decision to conduct a program to replace batteries in iPhone 6s devices that were manufactured between September and October 2015; **(e)** the \$29 Defective Battery Program (including the catalyst(s) for the implementation of that program); **(f)** reports of safety concerns allegedly related to the combustion of an iPhone battery, including, but not limited to, allegations made by Allstate Insurance Company and others in litigation, by the China Consumers Association, and/or by the Shanghai Consumer Council; **(g)** relevant warranty data and out-of-warranty data; **(h)** customer communications pertaining to the Battery Defect and/or related iOS updates; and **(i)** analyses of the economic effect of the Battery Defect and Apple’s efforts to mask the Battery defect via iOS updates, including any analysis of potential or actual sales of replacement iPhones generated as a result of such efforts.

The references to specific items or issues in this letter are not intended as a limitation on Apple’s duty to preserve all relevant evidence. Rather, the purpose of those references is to provide illustrative examples of the types of Information and Tangible Things we expect Apple to preserve as a result of its preservation obligations.

Given the pendency of this litigation, we also expect that Apple will not condition any battery replacements or iOS upgrades or patches on a waiver or release of any legal rights. If Apple intends to do so, please inform us no

FAZIO | MICHELETTI LLP

Daniel R. Adler — January 7, 2018 — Page 4

later than January 9, so that we can seek appropriate relief. As you may know, courts have cautioned that if the putative class and the class opponent are involved in an ongoing business relationship, unilateral communications from the class opponent to the class may be coercive and, thus, require court supervision. *See, e.g., Wang v. Chinese Daily News, Inc.*, 623 F.3d 743, 755 (9th Cir. 2010) (district court may regulate communications between class opponent and class members to avoid coercive behavior); *Kleiner v. First National Bank of Atlanta*, 751 F.2d 1193, 1201-03 (11th Cir. 1985) (district court's power to manage a class action includes the power to prohibit a defendant from making unsupervised, unilateral communications with the plaintiff class)

Additionally, given the importance of safeguarding the defective batteries and any other data (including diagnostic data) Apple is currently removing from class members' Affected iPhones in connection with the \$29 Defective Battery Program, please advise, no later than close of business on January 9, whether Apple intends to preserve all batteries and other data it obtains as a result of that program. If Apple does not respond by that date by indicating that it is complying with the instructions set forth herein, Plaintiff will seek immediate Court intervention.

With respect to the remaining instructions set forth herein, if Apple does not intend to comply with them, please advise no later than January 11, 2018. If Plaintiff's counsel do not receive a response by that date, Plaintiff's counsel will assume and rely on Apple's full compliance with its obligations to preserve evidence pertaining to this litigation.

Very truly yours,



Jeffrey L. Fazio

cc (by email):

- Adam J. Levitt
- Amy E. Keller

EXHIBIT G

Support

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iPhone Battery & Power Repair

Need more power? Get Apple battery service for your iPhone.



Can't turn on your iPhone?

Follow these steps first if your iPhone screen turns black or if your iPhone doesn't turn on at all. It might not require a repair.

[What to do if your iPhone won't power on >](#)

Does your battery drain too quickly?

Your iPhone battery's performance depends on how you use apps and settings. If your battery drains quickly, it might not require a replacement.

[Learn how to maximize iPhone battery life >](#)

iPhone battery and power repair costs

We'll test your iPhone to see if it has a battery issue or a different power issue. Your repair fees depend on the diagnosis and if the issue is covered under warranty or AppleCare+.

Our warranty covers a defective battery, but it doesn't cover wear from normal use.

- If you're covered under AppleCare+, we'll replace your battery at no charge if it retains less than 80 percent of its original capacity.
- If your iPhone needs battery replacement and it's not covered, there will be a service fee. See chart below for pricing.
- If your iPhone has another power issue, we'll give you the repair price after we determine the cause.

Not sure if you're covered? Check if you have AppleCare+ by entering your iPhone serial number.

iPhone battery service pricing

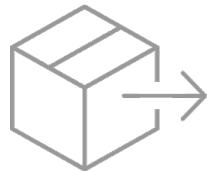
iPhone model	In-warranty or with AppleCare+	Out of warranty
iPhone SE	\$0	\$29*
iPhone 6, iPhone 6 Plus		
iPhone 6s, iPhone 6s Plus		
iPhone 7, iPhone 7 Plus		
iPhone 8, iPhone 8 Plus		
iPhone X		
All other eligible models	\$0	\$79

*Through December 31, 2018, the out-of-warranty battery service fee is \$29 for all eligible iPhone 6 or later models. Battery service at \$29 may be limited to one repair per iPhone.

Issues caused by accidental damage aren't covered under the Apple Limited Warranty. These prices apply only to battery repairs made by Apple. Other service providers may set their own prices. We'll add a \$6.95 shipping fee if your repair requires shipping and isn't covered under warranty or AppleCare+. All fees are in USD and exclude local tax.

[Start a battery service request](#)

Your repair options



Send in for repair



Bring in for repair

Start online or give us a call. We'll send a box right away to collect your iPhone. You can then arrange to ship it to an Apple Repair Center at your convenience. We'll deliver your iPhone back to you in 3-5 business days. If you have AppleCare+, you can also use our Express Replacement Service.

Make an appointment at an Apple Store or one of our many Apple authorized service locations, we'll try to fix your iPhone during your visit. In more complex cases, we might need to send it to an Apple Repair Center. If we do, your iPhone will be ready for pickup in 3-5 business days.

To protect your data, learn how to get your iPhone ready for service.

[Start a service request](#)

More information

[Check the status of your iPhone repair >](#)

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Warranty and legal

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Apple Delays iPhone 6 Plus Battery Replacements Until March-April Due to Limited Supply

Thursday January 11, 2018 7:20 am PST by [Joe Rossignol](#)

iPhone 6 Plus users hoping to take advantage of Apple's discounted [\\$29 battery replacements](#) may have to wait a few months.



Apple says iPhone 6 Plus replacement batteries are in short supply and won't be available until late March to early April in the United States and other regions, according to an internal document distributed to Apple Stores and Apple Authorized Service Providers this week and later obtained by MacRumors.

Apple's internal document quotes a shorter wait of "approximately two weeks" for iPhone 6 and iPhone 6s Plus battery replacements, and adds that batteries for all other models like the iPhone 6s, iPhone 7, iPhone 7 Plus, and iPhone SE are expected to be available "without extended delays" in most countries.

Apple noted that lead times may vary in some regions, including the Middle East, Africa, Latin America, Russia, and Turkey.

MacRumors has already received a few emails from readers with an iPhone 6 Plus who were quoted a late March to early April timeframe for the replacement service to be completed at Apple Stores in New York and North Carolina, in line with the information outlined in Apple's document.

A reliable source at an Apple Authorized Service Provider indicated that they recently received a package with dozens of replacement batteries, the majority of which were for iPhone 7 and iPhone 7 Plus models.

Apple lowered its battery replacement fee to \$29 last month for any customer with an iPhone 6 or newer [as part of an apology](#) over its lack of transparency about [slowing down some older iPhone models to prevent unexpected shutdowns](#). Apple noted that initial supplies of some batteries may be limited.

As with any supply-demand situation, availability of replacement batteries will likely vary by location. Keep in mind that many Apple Authorized Service Providers like MacMedics and ComputerCare are able to replace iPhone batteries, so this may be an option worth considering beyond an Apple Store.

A source adds that Apple Authorized Service Providers are permitted to set their own prices for out-of-warranty parts and repairs, so some third-party repair shops are charging more than \$29 for battery replacements, even if Apple might not prefer it, to ensure they are being fairly compensated.

Also keep in mind that Apple's discounted rate is available until December 31, 2018, so unless you absolutely need a battery replacement now, you may wish to consider waiting until later in the year to initiate the process.

If you are replacing your iPhone's battery for the first time, the \$29 price is available [regardless of whether the device passes or fails Apple's battery diagnostic test](#). To be eligible for any additional replacements at the discounted rate, however, the device [must explicitly fail the test](#) or the standard \$79 applies.

To get started, read our guide on [how to get your iPhone's battery replaced](#) with an appointment at an Apple Store or Apple Authorized Service Provider. There's also a mail-in option, but we've heard that Apple's repair center may only be replacing batteries that fail a diagnostic test, and sending back devices that pass.

Related Roundups: [iPhone 6s](#), [iPhone 7](#)

Buyer's Guide: [iPhone 8 \(Neutral\)](#), [iPhone 8 \(Neutral\)](#), [iPhone 8 \(Neutral\)](#)
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Moorepheus

4 days ago at 07:23 am

But, we can buy a new 8/8+ or X...lol

Rating: 26 Votes



SteveJUAE

4 days ago at 07:23 am

No surprise there then.....

Usual slowdowns :D

Rating: 21 Votes

vicviper789

4 days ago at 07:24 am

no worries, i planned to replace my battery at the end of the year to maximize my money

Rating: 14 VotesArtOfWarfare

4 days ago at 07:35 am

New conspiracy: Apple intentionally slowing down iPhone 6+ battery replacements to spur purchases of new iPhone X.

Rating: 12 VotesAJ5790

4 days ago at 07:35 am

This whole thing is so dumb! At my local Apple Store yesterday. The Genius said they have replaced batteries on iPhone Xs, 8s, and brand new 7s. The media has so completely mis-handled this story, and caused a huge delay in people getting genuine issues fixed. He said probably less than half of the batteries actually need replacing. So ridiculous.

Rating: 12 Votesedhudley

4 days ago at 07:37 am

I made an appointment last week at the Cherry Hill, New Jersey Apple Store to have the battery in my 6+ replaced, but got a call early this week stating what's now in the headline, don't count on a replacement until March or April. I'm disappointed that Apple seem to find new ways these days to crap on the customers.

Rating: 11 Votesotternonsense

4 days ago at 07:46 am

How convenient. Why get a \$29 battery in 2 months when you can have the revolutionary \$1000 iPhone X right now!

Rating: 10 Votesvkd

4 days ago at 07:28 am

The situation is turning into something of a farce.

Rating: 9 VotesNomadicTy

4 days ago at 07:35 am

So they basically chose crappy batteries that have to be throttled down within a year of purchase, or be replaced, so they can have thin phones?

I've had iPhones since the first, and have converted all my family members to iOS devices and macs. But this leaves a bad taste.

Rating: 8 Votesmacfacts

4 days ago at 08:01 am

What are you talking about? iPhone 6s are almost 3 1/2 years old now.

The iPhone 6s were less than 1 yr when people started having sudden shutdowns and about 1 yr old when Apple released the iOS update with throttling.

You think throttlegate happened last month?

Rating: 8 Votes

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